Supreme Court, U.S.
FILED
95-802 NOV 22 1995
OFFICE OF THE CLERK

No._____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

SHARON ANN POLLEY, and
PAULA SNEED,
Petitioners,

v.

THE UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ Of Certiorari to the United States Court Of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Should this Court grant certiorari to review the 5th Circuit Court of Appeals decision to sanction the district court's failure to properly sentence Petitioners in violation of the United States Sentencing Guidelines and the due process clause of the 5th Amendment to the United States Constitution?

2. Should this Court grant certiorari to review the 5th Circuit Court of Appeals decision to affirm Petitioners' convictions despite insufficient evidence to support them?

LIST OF ALL PARTIES TO THE PROCEEDINGS

Petitioners/Appellants/Defendants

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Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners, Sharon Ann Polley and Paula Sneed, respectfully pray that a Writ of Certiorari issue to review and reverse the Judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Opinion and Decision of the United States Court of Appeals for the Fifth Circuit is enclosed and printed as Appendix A.

JURISDICTION

The trial court's judgment was entered on March 9, 1994. Judgment as to Petitioner Sneed was amended on June 27, 1994. The Fifth Circuit affirmed Petitioners' convictions on August 24, 1995. Rehearing was denied on October 26,

1995. A copy of the order denying Petitioners' Motion for Rehearing is attached as Appendix E. This petition was timely filed within 90 days of the Fifth Circuit's decision not to rehear this matter. This Court's jurisdiction is invoked under Title 28 United States Code Section 1254.

STATUTES AND CONSTITUTIONAL PROVISIONS

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STATEMENT OF THE CASE

This case involves a telemarketing firm, "CPA," which operated in the Houston, Texas area. CPA employees contacted customers by phone regarding sweepstakes entries and prizes the customers had won. The customers were told they had won one of several prizes, but had to send a check covering shipping and handling charges before the prize could be sent. Employees used aliases when dealing with customers.

Petitioner Polley began working for CPA in June, 1993. Petitioner Sneed began working for CPA in July, 1993. Unbeknownst to Petitioners, CPA never awarded prizes that were promised. On July 30, 1993, the FBI executed search warrants at CPA. The business was terminated.

On October 20, 1993, a Federal Grand Jury in Midland, Texas, issued a seven (7) count superseding indictment in MO-93-058S against thirteen (13) defendants, including Petitioners. However, only Count 1, "Conspiracy

to commit mail fraud in violation of 18 U.S.C. §§ 371 and 1341," involved Petitioners.

Most of the defendants entered into plea agreements and did not stand trial. Other defendants entered pleas during the course of the trial. Only four defendants, including Petitioners, had their charges submitted to the jury for a verdict.

Trial began on January 10, 1994. The government contended that Petitioners knew that CPA, the telemarketing firm, was fraudulent and therefore, both were guilty of conspiracy. After the government rested, Petitioners requested Judgments of Acquittal and Instructed Verdicts. These requests were denied. After all parties closed, Petitioners renewed their requests for Judgments of Acquittal and Instructed Verdicts. These requests were denied as well.

On January 13, 1994, the jury returned its verdict. Petitioners were found guilty.

Sentencing was held on March 7, 1994. In violation of the United States Sentencing Guidelines, each defendant's Presentence Investigation Report based the calculation of the loss upon the total amount of money brought in during the course of the conspiracy, regardless of when each defendant entered the conspiracy. Petitioners did not raise an objection to the proposed calculation of the loss. However, the district court was put on notice of the error by Petitioners' co-defendant, Patrick Johnson, who objected to the calculation. However, the court overruled the objection and sentenced each defendant pursuant to the information provided in the presentence report. Petitioner Sneed was sentenced to 15 months imprisonment and 3 years supervised release, as well as being ordered to pay restitution jointly and severally with other coconspirators in the amount of $85,308.68. The

district courts judgment is attached as Appendix B. Petitioner Polley was sentenced to 12 months imprisonment and 3 years supervised release, as well as being ordered to pay restitution jointly and severally with other coconspirators in the amount of $85,308.68. The district court's Judgment is attached as Appendix C.

On June 24, 1994, the sentencing court amended judgment as to Sneed. Sneed's sentence was reduced by one month to 14 months imprisonment, while the other portions of the sentence remained the same. In addition, the total offense level and imprisonment range were changed. There is no indication in the records or transcripts as to why this was done. The district court's amended Judgment is attached as Appendix D.

Petitioners appealed to the United States Court of Appeals for the Fifth Circuit and prayed for reversal and acquittal or for remand for proper sentencing. On August 24, 1995, the Fifth Circuit affirmed their convictions and sentences. Rehearing was denied on October 26, 1995.

From their convictions and sentences and the affirmation by the Fifth Circuit, Petitioner prays for writ of certiorari.

REASONS FOR GRANTING THE PETITION

QUESTION ONE

WHETHER THE DISTRICT COURT'S FAILURE TO PROPERLY SENTENCE PETITIONERS WAS REVERSIBLE ERROR AND WHETHER PETITIONERS' RIGHTS TO DUE PROCESS PURSUANT TO THE 5TH AMENDMENT HAVE BEEN DENIED BY THE 5TH CIRCUIT COURT OF APPEALS SANCTIONING THIS ERROR.

According to U.S.S.G. § 1B1.3(a)(1)(B), in the case of a jointly undertaken criminal activity, the base level shall be determined on the basis of the following: "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." Petitioners asserted that the money that was brought in prior to their participation was not reasonably foreseeable, as that activity had already occurred. Therefore, when applying U.S.S.G.§ 2F1.1(b)(1)(G), the base offense level should not have been increased by six levels, as the amount of money over $70,000 was not reasonable foreseeable from the time of Petitioners' participation.

Co-Defendant Johnson timely objected to the loss calculation. His objection put the court on notice of its error. The sentencing court overruled the objection, disregarding the United States Sentencing Guidelines. The court sentenced Petitioners according to the total amount of money derived from the conspiracy.

The Fifth Circuit acknowledged the sentencing court's error (App., *infra* 22a) and remanded Co-Defendant Johnson's case for resentencing. However, the 5th Circuit noted that Petitioners did not **individually** object to the calculation. Therefore, the Court found that for error to be reversible it must be a "plain error" as defined by Rule 52 of the Federal Rules of Criminal Procedure. The Court said that Petitioners did not demonstrate any prejudice caused by the error and thus affirmed their sentences.

Petitioners respectfully submit that the 5th Circuit has erred. First of all, the plain error doctrine should not have been applied, pursuant to *Howard v. Gonzales*, 658 F.2d 352

(CA5 1982). As this Court knows, plain errors are those that went unnoticed and were not preserved by objection, but nonetheless were so egregious that they warrant appellate review. However, in the instant case, **the error was noticed and preserved**. Co-Defendant Johnson objected to the calculation as it applied to each defendant. Thus, the district court was given an opportunity to correct itself but failed to do so. According to *Howard*, when one party objects and thereby brings the matter to the attention of the court, further objections by other co-parties are unnecessary. *Id.* at 356.

Furthermore, in *United States v. Olano*, 113 S.Ct. 1771 (1993), this Honorable Court held that an appellate court may reverse under the plain error doctrine where 1) there is an error, 2) the error is plain or "obvious" 3) the error affects substantial rights, and 4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings *Id.* at 1777. Thus, even if the 5th Circuit were correct in applying the plain error standard of review, Petitioners submit that they have unequivocally met the standards set out in *Olano*.

The 5th Circuit said that in order to illustrate plain error Petitioners were required to demonstrate to the Court of Appeals exactly how the error prejudiced them. If this were an evidentiary issue, it would be simple to fulfill this requirement. The damage done by the inadmissible evidence would be evident in the record and the verdict. However, in the instant case, this burden is impractical. Petitioners were entitled to explicit findings as to the loss. They have no way of determining what their sentences could have been if not for the error. Without the financial information the district court was required to provide, Petitioners can only speculate as to the prejudice the error caused. Petitioners were entitled to detailed, financial information supporting such an increase in their offense levels. Without these six points, Petitioners'

guideline ranges would have been lower. They submit that the harm to them should have been obvious to the 5th Circuit and was clearly argued in their briefs.

Petitioners believe that the district court's defective sentencing procedure has hindered their constitutional rights. The 5th Amendment due process clause entitles every defendant to explicit findings as to the calculation of loss. The 5th Circuit has sanctioned the district court's flagrant error and departure from the accepted and usual course of sentencing proceedings. At the district court level, deviating from and circumventing the Guidelines is becoming common. The need for guidance from this Court is acute. The 5th Circuit's decision is erroneous. The issue that this decision raises is important. This case should be, at the very least, remanded to the district court for resentencing.

QUESTION TWO

WHETHER THERE WAS SUFFICIENT EVIDENCE TO CONVICT PETITIONERS OF CONSPIRACY

At trial, numerous coconspirators and "victims" testified regarding the operations of CPA and the phone calls which were made by the telemarketers. During these phone calls, "victims" were promised extravagant prizes if they would send in a specified amount of money to cover shipping and handling. In some cases, the "victims" were asked to purchase a product. The testimony revealed that most, if not all, of the "victims" never received a prize, although their checks were deposited in the CPA bank account. Numerous conspirators pled guilty to the charged conspiracy and agreed to testify against other conspirators in exchange for lenient sentences.

However, no evidence was presented which would permit a reasonable jury to infer that Petitioners knew of the illegal nature of the conspiracy or that they knew that prizes would not be awarded. For these reasons, Petitioners cannot be said to have knowingly participated in a fraudulent scheme, as the necessary facts to establish the fraud (that prizes were not awarded) was not within her knowledge. Therefore, the evidence was insufficient to enable a reasonable jury to find Petitioners guilty beyond a reasonable doubt.

The 5th Circuit disagreed and affirmed Petitioners' convictions. The Court found that a reasonable jury could infer their knowledge of the conspiracy through Petitioners' use of aliases and conflicting testimony. The Court supported its conclusion with *United States v. Judd*, 889 F.2d 1410 (5th Cir. 1989), *United States v. Sanchez*, 961 F.2d 1169 (5th Cir. 1992), and *United States v. Gallo*, 927 F.2d 815 (5th Cir. 1991). The court contended that these cases were factually similar to the instant case and therefore binding. However, Petitioners submit that the 5th Circuit has misconstrued the facts and intent of these decisions in order to justify the affirmance of Petitioners' convictions. In fact, the facts and circumstances surrounding the *Judd*, *Sanchez*, and *Gallo* cases are vastly different from the case at bar. For instance, the 5th Circuit has twisted the *Sanchez* decision to conclude that it is reasonable to infer a telemarketer's knowledge of a scheme merely from the telemarketers use of an alias while making phone sales. Use of aliases is a common, routine practice in the sales industry. Most telemarketers do so, and if the company they work for has violated the law, a jury could convict them based solely on their use of an alias. This decision, if allowed to stand, dramatically and unjustly reduces the burden the government has in proving a telemarketer's knowledge of a conspiracy.

The repercussions of such a finding could be far reaching and devastating. This Honorable Court's intervention is necessary.

CONCLUSION AND PRAYER

The United States Court of Appeals for the Fifth Circuit has committed a significant error in concluding 1) that the sentencing court's failure to properly sentence Petitioners was not reversible error, and 2) that there was sufficient evidence to convict Petitioners. The federal questions presented are important to the jurisprudence of the nation.

For these reasons, Petitioners, PAULA SNEED and SHARON ANN POLLEY, respectfully pray that this Court issue a Writ of Certiorari to review the Opinion of the United States Court of Appeals for the Fifth Circuit, and for such other and further relief to which they may be entitled.

Respectfully submitted,

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APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

UNITED STATES of America,
Plaintiff-Appellee,
v.
Paula SNEED, Norris Louis McGraw, Patrick Johnson, and Sharon Ann Polley, Defendants-Appellants.
No. 94-50148.

United States Court of Appeals,
Fifth Circuit.
Aug. 24, 1995.

Defendants were convicted in the United States District Court for the Western District of Texas, Lucius Desha Bunton, III, J., of conspiracy to commit mail fraud, and one defendant was also convicted of money laundering. Defendants appealed. The Court of Appeals, Emilio M. Garza, Circuit Judge, held that: (1) evidence sustained convictions for conspiracy to commit mail fraud; (2) evidence sustained conviction for money laundering; and (3) district court erred in failing to make explicit findings as to what portion of total amount of loss it attributed to two defendants represented losses occurring after each joint conspiracy to commit mail fraud; however, error was not plain error.

Affirmed in part, and vacated and remanded in part.

1. Criminal Law 1144.13(2.1), 1159.2(7)

In reviewing sufficiency of the evidence supporting a jury's verdict, Court of Appeals determines whether, viewing evidence and inferences that may be drawn from it in light most favorable to verdict, a rational jury could have found essential elements of offenses beyond a reasonable doubt.

2. Criminal Law 1159.4(1)

In reviewing sufficiency of the evidence to support a jury's verdict, Court of Appeals recognizes that jury was free to choose among all reasonable constructions of evidence, and Court accepts all credibility choices that tend to support jury's verdict.

3. Conspiracy 32

Three elements of conspiracy to commit mail fraud are (1) agreement between appellant and others (2) to commit crime of mail fraud, and (3) an overt act committed by conspirator in furtherance of that agreement.
18 U.S.C.A. §§ 371, 1341.

4. Conspiracy 32

To be guilty of conspiracy to commit mail fraud, defendant must have had requisite intent to commit mail fraud. 18 U.S.C.A. §§ 371, 1341.

5. Postal Service 35(6)

Mail fraud has no specific intent requirement regarding use of mails; test to determine whether defendant caused mails to be used is whether use was reasonably

foreseeable and defendant need not intend to cause mails to be used. 18 U.S.C.A. § 1341

6. Postal Service 35(2)

To establish essential elements of mail fraud, government must show that defendant used a scheme to defraud which involved use of the mails and that mails were used for purpose of executing the scheme. 18 U.S.C.A. § 1341

7. Postal Service 35(6)

Where one does an act with knowledge that use of mails will follow in ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, he "caused" the mails to be used, for purposes of offense of mail fraud. 18 U.S.C.A. § 1341.

8. Conspiracy 47(5)

Government's burden in a prosecution for conspiracy to commit mail fraud is to demonstrate beyond a reasonable doubt that defendants agreed to engage in a scheme to defraud in which they contemplated that the mails would logically be used. 18 U.S.C.A. §§ 371, 1341.

9. Conspiracy 24.5

Members of a conspiracy which functions through a division of labor need not be privy to details of each aspect of conspiracy.

10. Conspiracy 47(2)

Although each element of conspiracy charge must be proved beyond reasonable doubt, no element need be proved by direct evidence, but may be inferred from circumstantial evidence; thus, jury may infer an agreement from concert of action, voluntary participation from collocation of circumstances, and knowledge from surrounding circumstances.

11. Conspiracy 47(5)

There was sufficient evidence that defendant telemarketers knowingly agreed to engage in a scheme to defraud and that they used the mails to do so to sustain their convictions for conspiracy to commit mail fraud; telemarketers knowingly used false names when speaking to customers, testimony from telemarketers and victims showed that they knowingly misrepresented to customers that amount of money they needed to send in was calculated according to some objective scale, one telemarketer continued to work for codefendant even though she had told co-worker that she knew that working for codefendant was wrong, and although telemarketers contended they instructed customers to send their money via Federal Express, making it unlikely that customers would use the United States mails, alleged policy of asking customers to use Federal Express was neither enforced nor practiced to such a degree that customers' use of mails was unforeseeable. 18 U.S.C.A. §§ 371, 1341.

12. Postal Service 35(20)

Federal Express, a private carrier, is a form of delivery which falls beyond reach of federal mail fraud statutes. 18 U.S.C.A. § 1341.

13. Criminal Law 1134(3)

Even assuming that government promised to file a motion for reduction of defendant's sentence in light of substantial assistance, Court of Appeals could not review the claim where defendant did not suggest that government's failure to make the motion was unconstitutionally motivated. Fed. Rules Cr. Proc. Rule 35(b), 18 U.S.C.A.

14. United States 34

To obtain a conviction for money laundering, government must have shown that defendant knowingly conducted a financial transaction which involved proceeds of unlawful activity with intent to promote or further that unlawful activity. 18 U.S.C.A. § 1956.

15. United States 34

Conviction for money laundering through telemarketing operation was supported by testimony establishing that creation of telemarketing operation was defendant's idea, that defendant asked another to open bank account for operation, that the other person received checks from customers directly and from defendant, that that other person deposited checks payable to operation in bank account, that he wired money from bank account to defendant's bank account at defendant's request, and that defendant used the money he received from the other person for the operation's expenses. 18 U.S.C.A. § 1956.

16. Criminal Law 1158(1)

Factual findings made by district court in its determination of a defendant's relevant conduct for

sentencing purposes are subject to clearly erroneous standard of review on appeal.

17. Criminal Law 1158(1)

District court's sentence will be upheld on appeal so long as it results from a correct application of the Sentencing Guidelines to factual findings that are not clearly erroneous. U.S.S.G. § 1B1.1 et seq., 18 U.S.C.A.

18. Criminal Law 1139

District court's interpretations of Sentencing Guidelines, being conclusions of law, are reviewed de novo. U.S.S.G. § 1B1.1 et seq., 18 U.S.C.A.

19. Criminal Law 1181.5(8)

District court's error in failing to make explicit findings as to what portion of total amount of loss it attributed to defendant represented losses occurring after each joint conspiracy to commit mail fraud required vacation of sentence and remand for resentencing where government conceded it could not establish that defendant was not prejudiced. 18 U.S.C.A. §§ 371, 1341; U.S.S.G. § 1B1.3(a)(1)(B), 18 U.S.C.A.

20. Criminal Law 1042

Court of Appeals would review district court's determination of defendants' base offense levels for plain error where defendants did not timely object to determination of their base offense levels under the Sentencing Guidelines. U.S.S.G. § 1B1.1 et seq., 18 U.S.C.A.

21. Criminal Law 1177, 1319

District court erred in failing to make explicit findings as to what portion of total amount of loss it attributed to defendants represented losses occurring after each joint conspiracy to commit mail fraud; however, neither defendant demonstrated how error prejudiced her and, thus, neither had shown that the error affected her substantial rights. 18 U.S.C.A. §§ 371, 1341; U.S.S.G. § 1B1.3(a)(1)(B), 18 U.S.C.A.

Appeals from the United States District Court for the Western District of Texas.

Before POLITZ, Chief Judge, EMILIO M. GARZA, and STEWART, Circuit Judges.

EMILIO M. GARZA, Circuit Judge:

Paula Sneed, Norris McGraw, Patrick Johnson, and Sharon Polley were convicted of conspiracy to commit mail fraud in violation of 18 U.S.C. §§ 371, 1341 (1988). Norris McGraw was also convicted of money laundering in violation of 18 U.S.C. § 1956(1988). Sneed, McGraw, Johnson, and Polley appeal their convictions and sentences, and we affirm in part, vacate in part, and remand in part.

I

Sneed, McGraw, Johnson, and Polley were convicted of conspiring to commit mail fraud for their participation in one or both of two Houston telemarketing operations, Gulf Coast Network ("GCN") and Century Premier Associates

("CPA").[1] Before Sneed and Johnson worked at either GCN or CPA, they were salespersons for another Houston telemarketing business, Bemer Enterprises ("Bemer"). Bemer telemarketers would phone individuals, whose name and numbers appeared on a list purchased from another company, and inform them that they could receive one of three prizes; a car, a $2,000 cashier's check, or a jewelry package. Bemer customers would have to buy $398 worth of cleaning supplies in order to receive one of the prizes, and only jewelry packages were ever awarded.

McGraw began operating CPA out of the Bemer offices. He started CPA with money that he borrowed from Yousif Daoud, generally known as Joe David. McGraw was initially the sole employee of CPA, but he soon hired Polley and other telemarketers to work for him. He operated CPA out of the Bemer offices for about three weeks, and then moved the business into other offices. Not long after the move, Polley switched from being a CPA telemarketer to being CPA's receptionist. McGraw also hired more telemarketers, including Sneed and Johnson.

Telemarketers at CPA phoned individuals and told them that they had won a large prize, usually $10,000, but ranging from a mink coat to as much as $500,00 in cash, or that they had won one of a group of such prizes. The telemarketers then told the individuals that they could receive their prize only if they sent CPA a check to cover what was variously represented as gift taxes or shipping and handling expenses. The telemarketers instructed the individuals to

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[1] The distinction between GCN and CPA, and who worked for which at what point in time, is unclear from the record and largely irrelevant to the claims before us. Telemarketers testified at trial that the only difference between the allegedly separate companies was their names.

send their checks to CPA, via Federal Express, at either a Houston address or a Midland, Texas, address. The amount of the check, usually between $400 and $600, was determined by the telemarketer, and represented the largest amount the telemarketer thought the individual was likely to pay. Telemarketers worked on commission, receiving twenty percent of the amount sent in by their respective "customers."

Checks sent to Midland would be received by David, who deposited them in a Midland bank account that he had opened, under an assumed name, at McGraw's request; and checks sent to Houston would be forwarded to Midland to be deposited in the same account. David would deposit the checks in the account, keep five percent of the money, and wire the remainder to McGraw. McGraw used the money to pay commissions and other CPA expenses.

The FBI, which began investigating CPA's activities after the Midland Police Department received a complaint about the company, raided CPA's offices. Thirteen people were ultimately charged under an indictment that included counts of mail fraud, conspiracy to commit mail fraud, money laundering, and conspiracy to launder monetary instruments. Defendants other than Sneed, McGraw, Johnson, and Polley entered plea agreements, and many testified as Government witnesses at trial. A federal jury found Sneed, McGraw, Johnson, and Polley guilty of conspiring to commit mail fraud, and also found McGraw guilty of money laundering.

Sneed, Johnson, and Polley appeal their convictions and sentences, arguing that (1) insufficient evidence supports the jury's verdict against them on the mail fraud count and (2) the district court improperly determined their base offense levels. McGraw appeals his conviction on the money

laundering counts, arguing that insufficient evidence supports the jury's verdict against him.

II

[1.2] Sneed, Johnson, and Polley contend that insufficient evidence supports the jury's verdict against them on the conspiracy to commit mail fraud count, and McGraw contends that insufficient evidence supports the jury's verdict against him on the money laundering counts. In our review of the sufficiency of the evidence supporting a jury's verdict, "we determine whether, viewing the evidence and the inferences that may be drawn from it in the light most favorable to the verdict, a rational jury could have found the essential elements of the offenses beyond a reasonable doubt." *United States v. Pruneda-Gonzalez*, 953 F.2d 190, 193 (5th Cir.), *cert. denied*, 504 U.S. 978, 112 S.Ct. 2952, 119 L.Ed.2d 575 (1992)[2] We recognize that the jury was "free to choose among all reasonable constructions of the evidence," *United States v. Chaney*, 964 F.2d 437, 448 (5th Cir. 1992), and we "accept all credibility choices that tend to support the jury's verdict." *United States v. Anderson*, 933 F.2d 1261, 1274 (5th Cir. 1991).

A

[3-8] Sneed, Johnson, and Polley argue that a rational jury could not have found beyond a reasonable doubt

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[2] We apply this standard of review because Sneed, McGraw, Johnson, and Polley each preserved his or her sufficiency of the evidence claim by moving for a judgment of acquittal at trial. We apply a stricter standard when a defendant fails to preserve a sufficiency claim. *See United States v. Galvan*, 949 F.2d 777, 782-83 (5th Cir. 1991) (applying "manifest miscarriage of justice" standard where defendant failed to move for a directed verdict or a judgment of acquittal).

that they are guilty of conspiring to commit mail fraud. The three elements of conspiracy to commit mail fraud are "(1) an agreement between appellants and others (2) to commit the crime of mail fraud, and (3) an overt act committed by one of the conspirators in furtherance of that agreement." *United States v. Massey*, 827 F.2d 995, 1001 (5th Cir. 1987). To be guilty of conspiracy to commit mail fraud, Sneed, Johnson, and Polley must have had the requisite intent to commit mail fraud. *See id.* (holding that "'conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself'" (quoting *Ingram v. United States*, 360 U.S. 672, 678, 79 S.Ct. 1314, 1319, 3 L.Ed.2d 1503 (1959))). Mail fraud, however, has no specific intent requirement regarding use of the mails. *See Massey*, 827 F.2d at 1002.[3] "The test to determine whether a defendant caused the mails to be used is whether the use was reasonably foreseeable. The defendant need not intend to cause the mails to be used." *Massey*, 827 F.2d at 1002.[4] "The government's burden, therefore, is to demonstrate beyond a reasonable doubt that appellants agreed to engage in a scheme to defraud in which they contemplated that the mails would likely be used." *Id.*

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[3] To establish the essential elements of mail fraud, the government must show that the defendant (1) used a scheme to defraud, (2) which involved a use of the mails, and (3) that the mails were used for the purpose of executing the scheme. *United States v. Pazos*, 24 F.3d 660, 665 (5th Cir. 1994).

[4] "Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he causes' the mails to be used." *Pereira v. United States*, 347 U.S. 1, 8-9, 74 S.Ct. 358, 363, 98 L.Ed. 435 (1954); *accord United States v. Shively*, 927 F.2d 804, 815 (5th Cir.), *cert. denied*, 501 U.S. 1209, 111 S.Ct. 2806, 115 L.Ed.2d 979 (1991).

I

[9-10] Sneed, Polley, and Johnson contend that a rational jury could not have found beyond a reasonable doubt that they agreed to engage in a scheme to defraud. "The members of a conspiracy which functions through a division of labor need not ... be privy to the details of each aspect of the conspiracy.'" *United States v. Faulkner*, 17 F.3d 745, 769 (5th Cir.) (quoting *United States v. Richerson*, 833 F.2d 1147, 1154 (5th S.Ct. 193, 130 L.Ed.2d 125 (1994). Further, "[a]lthough each element of the conspiracy charge must be proved beyond a reasonable doubt, no element need be proved by direct evidence, but may be inferred from circumstantial evidence." *United States v. Espinoza-Seanez*, 862 F.2d 526, 537 (5th Cir. 1988). Thus, the jury may infer an agreement from concert of action, voluntary participation from a collocation of circumstances, and knowledge from surrounding circumstances. *Id.*

[11] The trial testimony of the Government's witnesses established that some CPA and GCN telemarketers other than Sneed, Polley, and Johnson were aware that McGraw's operation was illegitimate and conducted business in a manner consistent with such knowledge. Telemarketers other than Sneed, Polley, and Johnson testified that they solicited under assumed names and would tell customers that they had won a specific prize rather than one of a group of possible prizes. They testified that they were given the discretion to determine what amount of money they would ask customers to send in to claim the prize. Victims of the conspiracy confirmed the telemarketers' account.

Evidence presented of Sneed's involvement, viewed in the light most favorable to the jury's verdict, established that (1) Sneed worked for McGraw as a telemarketer at the second office; (2) during that time, Sneed worked under the

assumed name "Paula Martin;" (3) Sneed had not used an assumed name when she worked as a telemarketer at Bemer; (4) three witnesses received calls from "Paula Martin;" (5) while Sneed testified that she would always ask customers to send in the same amount of money, $498.15, two witnesses were asked by Paula Martin to send in a different amount; and (6) while Sneed testified that she never told customers that they had won a specific prize, all three witnesses had been told exactly what prize they allegedly had won.

Evidence presented of Johnson's involvement, viewed in the light most favorable to the jury's verdict, established that (1) Johnson worked for McGraw as a telemarketer at the second office; (2) while Johnson claimed that he had worked at CPA for only three or four days, two of his calls were made seven days apart; (3) during that time, Johnson worked under the assumed names "James Wilson" and "Jim Wilson;" (4) while Johnson claimed to have used a false name because there had been other telemarketers named Johnson at Bemer, there was no telemarketer working with him for McGraw who used the name Johnson; and (5) while Johnson testified that he would always work from the same script when dealing with customers, two of his customers sent in one amount of money, one sent in another, and neither amount matched what Sneed testified she asked for or the amounts Sneed's customers send in.

Evidence presented of Polley's involvement, viewed in the light most favorable to the verdict, established that (1) Polley worked for McGraw as a telemarketer; (2) during that time, Polley worked under the assumed names "Ms. Ross" and "Pamela Dorsey;" (3) three witnesses received calls from a "Ms. Ross," two of whom sent checks but received no award; (4) Polley told another telemarketer that she knew that working for McGraw was "wrong;" (5) Polley worked at the second office, mostly in the capacity of

receptionist, for at least a month before the FBI raid; (6) during that time, Polley received a phone call from the FBI that made her question the legitimacy of the operation; and (7) when the FBI raided the second office, Polley told them that she had only worked there for two days and was not familiar with McGraw's operation.

In *United States v. Judd*, 889 F.2d 1410 (5th Cir. 1989), *cert. denied*, 494 U.S. 1036, 110 S.Ct. 1494, 108 L.Ed.2d 629 (1990), we held that evidence similar to that presently before us sufficiently supported the conviction of a telemarketer on charges of conspiracy to commit mail fraud. *See id.* at 1415-1416. The conspirators in *Judd* defrauded individuals by purchasing an option on the surface rights to a parcel of land and then selling interests in the mineral rights. The court in *Judd* held that sufficient evidence supported the jury's verdict because the evidence at trial showed that the telemarketer, a salesperson who never held a managerial position in the conspiracy; (1) told potential buyers that the company he worked for "was in the process of securing mining permits and would begin mining soon," (2) had discussed the fact that the statements were false with a co-worker, (3) had discussed with a co-worker the fact that an investment report sent to potential buyers was a fake, and (4) made other false statements to potential buyers. Thus, although there was no evidence that the salesperson was a major player in the conspiracy, or that he even knew the extent of the conspiracy, the evidence showed that he knowingly participated in a scheme to defraud because he knowingly made false statements in furtherance of the scheme.

Based on the evidence presented at trial in the current case, it is clear that Sneed, Johnson, and Polley also knowingly made false statements to customers. All three knowingly used false names when speaking to customers.

See United States v. Sanchez, 961 F.2d 1169, 1178 (5th Cir.) (holding that jury could infer guilty knowledge from defendant's use of alias), *cert. denied*, — U.S. —, 113 S.Ct. 330, 121 L.Ed.2d 248 (1992). Testimony from Sneed and her victims establishes that Sneed knowingly misrepresented to customers that they were to receive a specific prize. *See United States v. Jensen*, 41 F.3d 946, 955 (5th Cir. 1994) (holding that defendant's "deceit and misrepresentations" were evidence of knowing involvement in conspiracy), *cert. denied*, — U.S. —, 115 S.Ct. 1835, 131 L.Ed.2d 754 (1995). Testimony from Sneed, Johnson, and their victims shows that Sneed and Johnson knowingly misrepresented to customers that the amount of money they needed to send in was calculated according to some objective scale. Finally, testimony from Polley and Government witnesses established that Polley continued to work as a receptionist for McGraw even though she had told a co-worker that she knew that working for McGraw was "wrong." Under *Judd*, therefore, the direct evidence alone is sufficient support for the jury verdict.

The direct evidence that Sneed, Johnson, and Polley knowingly deceived customers is bolstered by circumstantial evidence that points to the same conclusion. From the evidence showing that Sneed, Johnson, and Polley each gave conflicting stories about his or her own business practices or involvement in the operation, a jury could reasonably infer that they were aware of their guilt. *See United States v. Gallo*, 927 F.2d 815, 821 (5th Cir. 1991) (holding that inconsistent statements support inference of guilty knowledge). Similarly, from the evidence showing that Sneed and Johnson asked customers to send in varying amounts of money, it is reasonable to infer that Sneed and Johnson knew that the money could not have been necessary for the reasons that they were saying it was necessary. It is reasonable to infer from the fact that Polley questioned the

legitimacy of the operation after receiving a phone call from the FBI that she was aware of McGraw's illegitimate practices. Finally, it is reasonable to infer from the number of telemarketers who testified that they knew that the operation was illegal, that Sneed, Johnson, and Polley also knew. We conclude that, based on the evidence presented at trial, a rational jury could have concluded that Sneed, Johnson, and Polley knowingly agreed to engage in a scheme to defraud.

2

[12] Sneed, Johnson, and Polley next contend that a rational jury could not have found beyond a reasonable doubt that they contemplated the use of the United States mails in furtherance of a scheme to defraud. They contend that as CPA or GCN telemarketers, they instructed customers to send their money in via Federal Express,[5] making it so unlikely that customers would use the United States mails that the possibility was not reasonably foreseeable. While we have held that a defendant need not intend to cause the mails to be used to be guilty of conspiring to commit mail fraud, *Massey*, 827 F.2d at 1002, neither this nor any other circuit has addressed the question of whether a defendant who intends to prevent any use of the mails in furtherance of a conspiracy to defraud, and who takes steps to insure that the mails not be used in furtherance of the conspiracy, can be guilty of conspiring to commit mail fraud. Sneed, Johnson, and Polley's claim does not require us to do so, however.

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[5] Federal Express "is a form of delivery which falls beyond the reach of the federal mail fraud statutes." *United States v. Dray*, 901 F.2d 1132, 1135 (1st Cir.), *cert. denied*, 498 U.S. 895, 111 S.Ct. 245, 112 L.Ed.2d 204 (1990); *see Massey*, 827 F.2d at 1000 (finding insufficient evidence of mail fraud where relevant documents were as likely sent by Federal Express or UPS as through the postal system).

The evidence at trial established that the alleged policy of asking customers to use Federal Express was neither enforced nor practiced to such a degree that the customers' use of the mails was unforeseeable. Trial testimony showed that while those in managerial positions at CPA and GCN may have instructed the telemarketers to tell customers to use Federal Express, the managers did not insist on the use of Federal Express. As a result, the telemarketers viewed the use of Federal Express as merely a preferred means of conveyance. This result is evidenced by the testimony of the telemarketers and the fact that the telemarketers themselves did not insist on the use of Federal Express when it was not convenient for customers. At least five customers sent their checks through the mails, primarily using the United States Postal Service's express service, Express Mail. Sneed testified:

> Express Mail, sometimes when people were like in small cities, then they used what was convenient and closest to them, you know, a lady would tell me Federal Express is too far or something like that, you know, or, it's way over in another little town or something. You know. So they did whatever was convenient for them.

Given that the policy of asking customers to use Federal Express was neither enforced by McGraw nor consistently followed by the telemarketers, and the fact that the method the customers chose to use was beyond the telemarketers control, the jury could reasonably have inferred that it was foreseeable to the telemarketers either that one of their own customers would use the mails or that one of another telemarketer's customers would. Thus, we conclude that based on the evidence presented at trial, a rational jury could have concluded that it was reasonably foreseeable to Sneed,

Johnson, and Polley that the mails would be used in furtherance of the conspiracy.

B

[13-15] McGraw argues, in both his brief on appeal and his supplemental brief on appeal,[6] that a rational jury

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[6] In his supplemental brief on appeal, McGraw also argues that (1) the district court improperly admitted hearsay evidence against him, (2) he received ineffective assistance of counsel at trial, (3) the Government improperly failed to move that the district court reduce his sentence in light of the substantial assistance he provided in the prosecution of another defendant, and (4) he should be allowed to serve the remainder of his sentence at home, in home confinement.

We do not address McGraw's evidentiary claim because he did not object to the alleged hearsay at trial. *See United States v. Garcia*, 995 F.2d 556, 561 (5th Cir. 1993) (refusing to address hearsay claim because defendant failed to object to testimony on hearsay grounds). We similarly decline to address McGraw's ineffective assistance claim. *See United States v. Gibson*, 55 F.3d 173, 179 (5th Cir. 1995) ("As a general rule, Sixth Amendment claims of ineffective assistance of counsel cannot be litigated on direct appeal, unless they were adequately raised in the district court."). Finally, we do not address McGraw's request for home confinement because such requests are properly directed to the Bureau of Prisons. *See* 18 U.S.C. § 3624(c) (1988) (providing that Bureau of Prisons has the authority to "place a prisoner in home confinement"); *see also Prows v. Federal Bureau of Prisons*, 981 F.2d 466, 469 (10th Cir. 1992) ("Nothing in § 3624(c) indicates any intention to encroach upon the Bureau's authority to decide where the prisoner may be confined during the pre-release period."), *cert. denied*, — U.S. —, 114 S.Ct. 98, 126 L.Ed.2d 65 (1993).

McGraw contends that the Government promised to make a motion, under Rule 35(b) of the Federal Rules of Criminal Procedure, that his sentence be reduced in light of the substantial assistance he provided in the prosecution of another defendant. In *Wade v. United States*, 504 U.S. 181, 112 S.Ct. 1840, 118 L.Ed.2d 524 (1992), the Supreme Court held that the government's failure to file such a motion

could not have found beyond a reasonable doubt that he is guilty of money laundering. In order to obtain a conviction for money laundering, the Government must have shown that McGraw "(1) knowingly conducted a financial transaction; (2) which involved the proceeds of an unlawful activity; and (3) with the intent to promote or further that unlawful activity." *United States v. Morris*, 46 F.3d 410, 423 (5th Cir. 1995) (citing 18 U.S.C. § 1956(a)(1)(A)(i)), *cert. denied*, — U.S. —, 115 S.Ct. 2595, 132 L.Ed.2d 842 (1995). Under 18 U.S.C. § 1956(c)(4)(A), a "financial transaction" is "a transaction which in any way or degree affects interstate commerce" and involves a monetary instrument, the movement of funds, or the transfer of title to property. We have held that an individual who received money through such a transaction "conducted a financial transaction" for the purposes of § 1956 where the transfer occurred "pursuant to a prearranged agreement." *United States v. Alford*, 999 F.2d 818, 824 (5th Cir. 1993).

Trial testimony established that the creation of CPA was McGraw's idea, that McGraw asked David to open the Midland bank account for CPA, that David received checks from CPA customers directly and from McGraw, that David deposited checks payable to CPA in the Midland account,

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is not reviewable unless the defendant makes a "substantial threshold showing" that the government's refusal is based upon unconstitutional motives. *United States v. Arishi*, 54 F.3d 596, 597-98 (9th Cir. 1995) (citing *Wade*); *accord Bischel v. United States*, 32 F.3d 259, 263 (7th Cir. 1994). Even assuming that the Government did promise to file a Rule 35(b) motion on McGraw's behalf, we cannot review McGraw's Rule 35(b) claim because he does not suggest that the Government's failure to make the motion was unconstitutionally motivated. *See United States v. Jackson*, 22 F.3d 583, 585-86 (5th Cir. 1994) (refusing to review defendant's claim that government improperly failed to move for sentence reduction based on defendant's substantial assistance because defendant made no claim of unconstitutional motive).

and that David wired money from the Midland account to McGraw's bank account at McGraw's request. McGraw used the money he received from David for CPA expenses. We therefore conclude that a rational jury could find beyond a reasonable doubt that McGraw is guilty of money laundering. *See Alford*, 999 F.2d at 824 (finding sufficient evidence of money laundering where defendant received proceeds of fraudulent scheme in his bank account pursuant to prearranged agreement and used the money to further mail fraud scheme).

III

[16-18] Sneed, Polley, and Johnson challenge their sentences, arguing that the district court improperly determined what conduct was relevant to its determination of their base offense levels. "The factual findings made by a district court in its determination of a defendant's relevant conduct for sentencing purposes are subject to the 'clearly erroneous' standard of review on appeal." *United States v. McCaskey*, 9 F.3d 368, 372 (5th Cir. 1993), *cert. denied*, — U.S.—, 114 S.Ct. 1565, 128 L.Ed.2d 211 (1994). "The district court's sentence will be upheld so long as it results from a correct application of the guidelines to factual findings that are not clearly erroneous. The district court's interpretations of the guidelines, being conclusions of law, are reviewed de novo." *Id.* (citation omitted).

Under section 1B1.3 of the Sentencing Guidelines, a sentencing court considers "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity." United States Sentencing Commission, *Guidelines Manual*, § 1B1.3 (Nov. 1994). Under section 2F1.1(b)(1)(G), a sentencing court increases by six levels the base offense level of a defendant convicted

of an offense involving fraud that results in losses of $70,000 to $120,000.

Sneed, Johnson, and Polley contend that the district court erroneously attributed to them losses occurring before they joined the conspiracy because such losses were not reasonably foreseeable under section 1B1.3(a)(1)(B). The district court attributed a loss in excess of $96,000 to each, a figure that represents the total amount of loss attributable to the conspiracy, and each received a six-level increase under section 2F1.1.[7]

In *United States v. Carreon*, 11 F.3d 1225 (5th Cir. 1994), we held that "the 'reasonable foreseeability' requirement contained in U.S.S.G. § 1B1.3(a)(1)(B) is prospective only, and consequently cannot include conduct occurring before the defendant joined the conspiracy." *Id.* at 1228. Citing our holding in *Carreon*, the Government concedes on appeal that Sneed, Johnson, and Polley's sentencing claim has some merit. The Government correctly notes, however, that while Johnson objected at trial to his presentence report's recommendation that his base offense level be determined based on a loss amount that included losses incurred before he joined the conspiracy, Sneed and Polley did not.

[19] Because the district court did not make explicit findings as to what portion of the total amount of loss it attributed to Johnson represents losses occurring after he

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[7] Sneed's presentence report states that she contacted four of the 91 identified victims of the conspiracy, and that those four individuals sent CPA a total of $1,996.57. Johnson's presentence report states that he contacted two of the victims, and that those two individuals sent CPA a total of $1,204.24. Polley's presentence report states that she contacted ten of the victims, and that those ten individuals sent CPA a total of $6,462.92.

joined the conspiracy, and because the Government concedes that it "cannot establish that Johnson was not prejudiced, and that any error was harmless," we vacate Johnson's sentence and remand to the district court for resentencing. *See id.* (reversing and remanding sentences where district court did not make explicit findings as to what losses it attributed to defendants resulting from conduct occurring before they joined conspiracy).

[20,21] Because Sneed and Polley did not timely object to the determination of their base offense levels, we review the district court's determination for plain error. *See United States v. Calverley*, 37 F.3d 160, 162 (5th Cir. 1994) (en banc) ("In exceptional circumstances, appellate courts may, in the interests of justice, notice errors to which no objection has been made. Such circumstances are sharply circumscribed by the plain error standard ...."), *cert denied*, — U.S. —, 115 S.Ct. 1266, 131 L.Ed.2d 145 (1995). Under *Carreon*, it is clear that the district court erred in failing to make explicit findings as to what portion of the total amount of loss it attributed to Sneed and Polley represents losses occurring after each joined the conspiracy. Having determined that the district court so erred, we must still examine whether the error was plain and affected Sneed and Polley's substantial rights before we may review their claim. *See United States v. Olano*
, — U.S. —, — —, 113 S.Ct. 1770, 1777-78, 123 L.Ed.2d 508 (1993) (limiting review of errors to which party did not timely object to those errors that are plain and affected defendant's substantial rights).

Neither Polley nor Sneed has demonstrated on appeal how the court's error prejudiced her, and thus neither has shown that the error affected her substantial rights. Neither even argues that losses occurred before she joined the conspiracy, much less that those losses were significant

enough that, had they been subtracted from the total loss attributed to her, her base level increase under 2F1.1(b)(1) would have been different. "*Olano* counsels that in most cases the affecting of substantial rights requires that the error be prejudicial; it must affect the outcome of the proceeding." *Calverley*, 37 F.3d at 164. "In contrast to the 'harmless error' inquiry, though, "the defendant rather than the Government ... bears the burden of persuasion with respect to prejudice.'" *United States v. Cabral-Castillo*, 35 F.3d 182, 189 (5th Cir. 1994) (quoting *Olano*, — U.S. at —, 115 S.Ct. at 1778), *cert. denied*, — U.S. —, 115 S.Ct. 1157, 130 L.Ed.2d 1113 (1995). "Absent a showing that a substantial right has been compromised, no remedy is available." *Calverley*, 37 F.2d at 164. Because Polley and Sneed have not shown that the district court's error was plain, we cannot consider their sentencing claim.

IV

For the foregoing reasons, we AFFIRM Sneed, Johnson, and Polley's convictions on the conspiracy to commit mail fraud count; and AFFIRM McGraw's conviction on the money laundering counts. We AFFIRM Sneed and Polley's sentences, but we VACATE Johnson's sentence and REMAND to the district court for resentencing, consistent with this opinion, with respect to him alone.

APPENDIX B

UNITED STATES DISTRICT COURT
Western District of Texas
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA
v. Case Number Mo-
PAULA SNEED 93-CR-058 (05)
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, PAULA SNEED, was represented by Jack Chappell.

The defendant was found guilty on count(s) one of the superseding indictment by a jury verdict on January 13, 1994, after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18 USC 371 & 1341	Conspiracy to to Commit Mail Fraud	April 26, 1993 thru July 17,1993	One (1)

As pronounced on March 7, 1993, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $ 50.00, for count(s) one of

the superseding indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, an special assessments imposed by this Judgment are fully paid.

Signed this the 7th day of MARCH, 1994.

/s/ Lucius D. Bunton
LUCIUS D. BUNTON
Senior United States District Judge

Defendant's SSAN: 494-80-2871
Defendant's Date of Birth: June 9, 1964
Defendant's address: 6619 Grandvale; Houston, Texas 77072

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of fifteen (15) months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons. The defendant shall contact the **UNITED STATES MARSHAL SERVICE, MIDLAND, TEXAS**, not later than 10:00 a.m. on May 9, 1994, to ascertain to which institution she is to report and shall report as directed.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

X If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

X The defendant shall not own or possess a firearm or destructive device.

X The defendant shall abide by the standard conditions of probation and supervised release recommended by the Sentencing Commission and amended by the United States District Judges for the Western District of Texas dated May 6, 1991.

X For any unpaid balance of restitution at the commencement of the term of supervised release, the defendant shall make monthly restitution payments as directed by the United States Probation Office.

X The defendant will not incur credit charges or open lines of credit without approval from the United States Probation Office.

X The defendant if required to provide the United States Probation Officer access to any requested financial information.

X The defendant is prohibited from engaging in employment as a telephone sales representative or telemarketer or any related occupation as determined by the United States Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) The defendant shall not use or possess methadone for treatment purposes, or in any other manner, shape or form without express authority of the court.

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	Amount of Restitution
See ATTACHED LIST (3 pages)	TOTAL $ 85,308.68

THIS DEFENDANT SHALL PAY THIS RESTITUTION JOINTLY AND SEVERALLY WITH THE ORDER OF RESTITUTION IMPOSED ON THE CO-CONSPIRATORS.

Payments of restitution are to be made to the **UNITED STATES ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT, 601 N.W. LOOP 410, SUITE 600, SAN ANTONIO, TEXAS 78206** for transfer to the payee(s).

Restitution shall be paid IMMEDIATELY.

Any unpaid restitution balance that remains at the commencement of the term of supervised release shall be paid in monthly payments as directed by the United States Probation Office.

Any payment shall be divided proportionately among the payees named unless otherwise specified here:

THE DEFENDANT IS ORDERED TO PAY RESTITUTION IN THE TOTAL AMOUNT OF $85,308.68 **IMMEDIATELY** TO THE **UNITED STATES ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT, 601 N.W. LOOP 410, SUITE 600, SAN ANTONIO, TEXAS 78206**. THIS RESTITUTION IS FOR THE FOLLOWING VICTIMS IN THE AMOUNTS LISTED:

EMMA LILES	$ 608.21
DORIS G. JENKINS	601.23
ROBERT A. BURRIS	606.22
ANN P. ATKINS	609.11
MAY DONALDSON	607.24
MAXINE V. COLLINS	606.21
CHARLENE M. NYGARD	602.21
ANALENA WADE	605.23
LILLIAN C. WEISSER	301.23
BERNADETTE REDLINGER	815.05
EVELYN MAY KINDER	2,500.00
DOROTHY C. BELLEW	300.00
HILDA E. WENDT	683.15
MRS. WILLIAM BALDWIN	2,512.19
MAURICE HART	250.00
WALTER BERTHELSEN	3,217.19
LILLIAN HALLQUIST	587.11
VERNETTE T. LANDERS	398.15
RUBYE C. ARNOLD	825.00
RICARDO MARTINEZ	1,283.52
VIRGINIA B. LYBARGER	550.00
ORVAL/EVA BRENNER	602.11
LUCY R. WAGNER	992.72
DELIA LAWRENCE	300.00
LOUISE G. PAYNE	500.00
OUMAROU CAMARA	798.81
CHRISTINE F. RICHARDS	298.15
JOHN CHARLES PFINGSTEN	698.37

CURTIS E. NEWMAN	$ 798.15
RUTH S. URIARTE	400.11
JOHN C. MILLER	611.00
EDWARD T. MOONEY	798.15
HAROLD J. LEE	602.11
EDNA S. ALEXANDER	602.11
RUTHIE LEE GORDON	602.11
THOMAS D. CAGLE	702.11
LA ZOVA NORMA LOFTAN	609.32
MINNIE KLINGENSMITH	609.32
SIBYL D. HORTMAN	611.04
JENNIE GARDEN	2,500.00
MARTHA PARKS	782.65
LOUISE D. HORD	498.15
WILLIAM GLICKEN	609.32
JANET J. HEME	602.12
GUMERSINDO C. TORRES	609.32
VERNETTE T. LANDERS	300.00
LOUISE G. PAYNE	298.15
DORIS M. McCOY	998.51
EDWARD T. MOONEY	798.15
MADELINE GREEN	400.00
RALPH BISHNER	660.00
ANGELICA DECOUD	602.11
MARJORY B. MOORE	602.11
DELINA I. MOORE	400.00
MARY B. CONN	602.11
GEORGE/EMILY MIHULOWICZ	602.00
SANDY COPELAND	1,283.51
LAURA V. McDONALD	602.11
DOROTHY HATCH	25,000.00
LUTHER SHAW	607.68
ALICE YORBA	609.32
CARMEN R. CORDERO	498.15
MADELINE GREEN	80.00
WILLIAM ROSE	602.32

DOROTHY SINCLAIR	798.15
EUGENE P. DOMONKOS	550.00
CLEO/JOANNE KLOZENBUCHER	611.04
JOYCE CHRISTINE PAX	400.00
ROOSEVELT G. JOHNSON	946.26
GLORIA EVERSON	350.00
AUDREY L. JONES	598.00
EDWARD DUNN, JR.	2,485.00
KURT E./CAROL HANHART	3,501.50
DAVID OWEN	2,500.00
ILENE LOCKLEAR	609.32
BETH McCALL	607.68
TOTAL	$ 85,308.68

THIS DEFENDANT SHALL PAY THIS RESTITUTION JOINTLY and SEVERALLY WITH THE ORDER OF RESTITUTION IMPOSED ON THE CO-CONSPIRATORS.

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	13
Criminal History Category:	II
Imprisonment Range:	15 months to 21 months
Supervised Release Range:	2 to 3 years
Fine Range:	$ 3,000 to $ 30,000
Restitution:	$ 85,308.68

The fine is waived or is below the guideline range because of the defendant's inability to pay a fine in addition to restitution.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

APPENDIX C

UNITED STATES DISTRICT COURT
Western District of Texas
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA
v. Case Number
Mo-93-CR-058 (07)

SHARON ANN POLLEY
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, SHARON ANN POLLEY, was represented by Alan Harris.

The defendant was found guilty on count(s) one of the superseding indictment by a jury verdict on January 13, 1994, after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18 USC 371 & 1341	Conspiracy to Commit Mail Fraud	April 26, 1993 thru July 17, 1993	One (1)

As pronounced on March 7, 1994, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $ 50.00, for count(s) one of the superseding indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 7th day of MARCH, 1994.

/s/ Lucius D. Bunton
LUCIUS D. BUNTON
Senior United States District Judge

Defendant's SSAN: 461-86-9042
Defendant's Date of Birth: January 12, 1949
Defendant's address: 8404 South Course, #908; Houston, Texas 77072

Defendant: SHARON ANN POLLEY
Case Number: MO-93-CR-058 (07)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twelve (12) months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons. The defendant shall contact the **UNITED STATES MARSHALL SERVICE, MIDLAND, TEXAS**, not later than 10:00 a.m. on **May 9, 1994**, to ascertain to which institution she is to report and shall report as directed.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____
_____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: SHARON ANN POLLEY
Case Number: MO-93-CR-058 (07)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

X If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

X The defendant shall not own or possess a firearm or destructive device.

X The defendant shall abide by the standard conditions of probation and supervised release recommended by the Sentencing Commission and amended by the

United States District Judges for the Western District of Texas dated May 6, 1991.

X For any unpaid balance of restitution at the commencement of the term of supervised release, the defendant shall make monthly restitution payments as directed by the United States Probation Office.

X The defendant will not incur credit charges or open lines of credit without approval from the United States Probation Officer.

X The defendant will provide the United States Probation Officer access to any required financial information.

X The defendant is prohibited from engaging in employment as a telephone sales representative or telemarketer or any related occupation as determined by the United States Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) The defendant shall not use or possess methadone for treatment purposes, or in any other manner shape or form, without express authority of the court.

Defendant: SHARON ANN POLLEY
Case Number: MO-93-CR-058 (07)

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	Amount of Restitution
SEE ATTACHED LIST (3 pages)	TOTAL $ 85,308.68

THIS DEFENDANT SHALL PAY THIS RESTITUTION JOINTLY AND SEVERALLY WITH THE ORDER OF RESTITUTION IMPOSED ON THE CO-CONSPIRATORS.

Payments of restitution are to be made to the **UNITED STATES ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT, 601 N.W. LOOP 410, SUITE 600, SAN ANTONIO, TEXAS 78206** for transfer to the payee(s).

Restitution shall be paid IMMEDIATELY.

Any unpaid balance of restitution that remains at the commencement of the term of supervised release shall be paid in monthly restitution payments as directed by the United States Probation Office.

Any payment shall be divided proportionately among the payees named unless otherwise specified here:

THE DEFENDANT IS ORDERED TO PAY RESTITUTION IN THE TOTAL AMOUNT OF $85,308.68 IMMEDIATELY TO THE UNITED STATES ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT, 601 N.W. LOOP 410, SUITE 600, SAN ANTONIO, TEXAS 78206. THIS RESTITUTION IS FOR THE FOLLOWING VICTIMS IN THE AMOUNTS LISTED:

EMMA LILES	$ 608.21
DORIS G. JENKINS	601.23
ROBERT A. BURRIS	606.22
ANN P. ATKINS	609.11
MAY DONALDSON	607.24
MAXINE V. COLLINS	606.21
CHARLENE M. NYGARD	602.21
ANALENE WADE	605.23
LILLIAN C. WEISSER	301.23
BERNADETTE REDLINGER	815.05
EVELYN MAY KINDER	2,500.00
DOROTHY C. BELLEW	300.00
HILDA E. WENDT	683.15
MRS. WILLIAM BALDWIN	2,512.19
MAURICE HART	250.00
WALTER BERTHELSEN	3,217.19
LILLIAN HALLQUIST	587.11
VERNETTE T. LANDERS	398.15
RUBYE C. ARNOLD	825.00
RICARDO MARTINEZ	1,283.52
VIRGINIA B. LYBARGER	550.00
ORVAL/EVA BRENNER	602.11
LUCY R. WAGNER	992.72
DELIA LAWRENCE	300.00
LOUISE G. PAYNE	500.00
OUMAROU CAMARA	798.81
CHRISTINE F. RICHARDS	298.15

JOHN CHARLES PFINGSTEN	$ 698.37
CURTIS E. NEWMAN	798.15
RUTH S. URIARTE	400.11
JOHN C. MILLER	611.00
EDWARD T. MOONEY	798.15
HAROLD J. LEE	602.11
EDNA S. ALEXANDER	602.11
RUTHIE LEE GORDON	602.11
THOMAS D. CAGLE	702.11
LA ZOVA NORMA LOFTAN	609.32
MINNIE KLINGENSMITH	609.32
SIBYL D. HORTMAN	611.04
JENNIE GARDEN	2,500.00
MARTHA PARKS	782.65
LOUISE D. HORD	498.15
WILLIAM GLICKEN	609.32
JANET J. HEME	602.12
GUMERSINDO C. TORRES	609.32
VERNETTE T. LANDERS	300.00
LOUISE G. PAYNE	298.15
DORIS M. McKOY	998.51
EDWARD T. MOONEY	798.15
MADELINE GREEN	400.00
RALPH BISHNER	660.00
ANGELICA DECOUD	602.11
MARJORY B. MOORE	602.11
DELINA I. MOORE	400.00
MARY B. CONN	602.11
GEORGE/EMILY MIHULOWICZ	602.00
SANDY COPELAND	1,283.51
LAURA V. McDONALD	602.11
DOROTHY HATCH	25,000.00
LUTHER SHAW	607.68
ALICE YORBA	609.32
CARMEN R. CORDERO	498.15
MADELINE GREEN	80.00

WILLIAM ROSE	$ 602.32
DOROTHY SINCLAIR	798.15
EUGENE P. DOMONKOS	550.00
CLEO/JOANNE KLOZENBUCHER	611.04
JOYCE CHRISTINE PAX	400.00
ROOSEVELT G. JOHNSON	946.26
GLORIA EVERSON	350.00
AUDREY L. JONES	598.00
EDWARD DUNN, JR.	2,485.00
KURT E./CAROL HANHART	3,501.50
DAVID OWEN	2,500.00
ILENE LOCKLEAR	609.32
BETH McCALL	607.68
TOTAL	$ 85,308.68

THIS DEFENDANT SHALL PAY THIS RESTITUTION JOINTLY and SEVERALLY WITH THE ORDER OF RESTITUTION IMPOSED ON THE CO-CONSPIRATORS.

Defendant: SHARON ANN POLLEY
Case Number: MO-93-CR-058 (7)

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court

Total Offense Level:	13
Criminal History Category:	1
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	$ 3,000 to $ 30,000
Restitution:	$ 85,308.68

The fine is waived or is below the guideline range because of the defendant's inability to pay a fine in addition to restitution.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

APPENDIX D

UNITED STATES DISTRICT COURT
Western District of Texas
MIDLAND/ODESSA DIVISION

UNITED STATES OF AMERICA

v.

PAULA SNEED
Defendant.

Case Number
MO-93-CR-058 (05)

AMENDED
JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, PAULA SNEED, was represented by Jack Chappell.

The defendant was found guilty on count(s) one of the superseding indictment by a jury verdict on January 13, 1994, after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date of Offense	Count Number(s)
18 USC 371 & 1341	Conspiracy to Commit Mail Fraud	April 26, 1993 thur July 17, 1993	One (1)

As pronounced on March 7, 1993, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $ 50.00, for count(s) one of the superseding indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 24th day of JUNE, 1994, NUNC PRO TUNC the 7th day of March, 1994.

/s/ Lucius D. Bunton
LUCIUS D. BUNTON
Senior United States District Judge

Defendant's SSAN: 494-80-2871
Defendant's Date of Birth: June 9, 1964
Defendant's address: 6619 Grandvale; Houston, Texas 77072

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of fourteen (14) months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons. The defendant shall contact the **UNITED STATES MARSHAL SERVICE, MIDLAND, TEXAS**, not later than 10:00 a.m. on May 9, 1994, to ascertain to which institution she is to report and shall report as directed.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

X If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

X If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

X The defendant shall not own or possess a firearm or destructive device.

X The defendant shall abide by the standard conditions of probation and supervised release recommended by the Sentencing Commission and amended by the

United States District Judges for the Western District of Texas dated May 6, 1991.

X For any unpaid balance of restitution at the commencement of the term of supervised release, the defendant shall make monthly restitution payments as directed by the United States Probation Office.

X The defendant will not incur credit charges or open lines of credit without approval from the United States Probation Office.

X The defendant is required to provide the United States Probation Officer access to any requested financial information.

X The defendant is prohibited from engaging in employment as a telephone sales representative or telemarketer or any related occupation as determined by the United States Probation Office.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment.

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) The defendant shall not use or possess methadone for treatment purposes, or in any other manner, shape or form, without express authority of the court.

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution to the following persons in the following amounts:

Name of Payee	Amount of Restitution
SEE ATTACHED LIST (3 pages)	TOTAL $ 85,308.68

THIS DEFENDANT SHALL PAY THIS RESTITUTION JOINTLY AND SEVERALLY WITH THE ORDER OF RESTITUTION IMPOSED ON THE CO-CONSPIRATORS.

Payments of restitution are to be made to the **UNITED STATES ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT, 601 N.W. LOOP 410, SUITE 600, SAN ANTONIO, TEXAS 78206** for transfer to the payee(s).

Restitution shall be paid **IMMEDIATELY**.

Any unpaid restitution balance that remains at the commencement of the term of supervised release shall be paid in monthly payments as directed by the United States Probation Office.

Any payment shall be divided proportionately among the payees named unless otherwise specified here:

THE DEFENDANT IS ORDERED TO PAY RESTITUTION IN THE TOTAL AMOUNT OF $85,308.68 IMMEDIATELY TO THE **UNITED STATES ATTORNEY'S OFFICE, FINANCIAL LITIGATION UNIT, 601 N.W. LOOP 410, SUITE 600, SAN ANTONIO, TEXAS 78206**. THIS RESTITUTION IS FOR THE FOLLOWING VICTIMS IN THE AMOUNTS LISTED:

EMMA LILES	$ 608.21
DORIS G. JENKINS	601.23
ROBERT A. BURRIS	606.22
ANN P. ATKINS	609.11
MAY DONALDSON	607.24
MAXINE V. COLLINS	606.21
CHARLENE M. NYGARD	602.21
ANALENE WADE	605.23
LILLIAN C. WEISSER	301.23
BERNADETTE REDLINGER	815.05
EVELYN MAY KINDER	2,500.00
DOROTHY C. BELLEW	300.00
HILDA E. WENDT	683.15
MRS. WILLIAM BALDWIN	2,512.19
MAURICE HART	300.00
WALTER BERTHELSEN	3,217.19
LILLIAN HALLQUIST	587.11
VERNETTE T. LANDERS	398.15
RUBYE C. ARNOLD	825.00
RICARDO MARTINEZ	1,283.52
VIRGINIA B. LYBARGER	550.00
ORVAL/EVA BRENNER	602.11
LUCY R. WAGNER	992.72
DELIA LAWRENCE	300.00
LOUISE G. PAYNE	500.00
OUMAROU CAMARA	798.81
CHRISTINE F. RICHARDS	298.15

JOHN CHARLES PFINGSTEN	698.37
CURTIS E. NEWMAN	798.15
RUTH S. URIARTE	400.11
JOHN C. MILLER	611.00
EDWARD T. MOONEY	798.15
HAROLD J. LEE	602.11
EDNA S. ALEXANDER	602.11
RUTHIE LEE GORDON	602.11
THOMAS D. CAGLE	702.11
LA ZOVA NORMA LOFTAN	609.32
MINNIE KLINGENSMITH	609.32
SIBYL D. HORTMAN	611.04
JENNIE GARDEN	2,500.00
MARTHA PARKS	782.65
LOUISE D. HORD	498.15
WILLIAM GLICKEN	609.32
JANET J. HEME	602.12
GUMERSINDO C. TORRES	609.32
VERNETTE T. LANDERS	300.00
LOUISE G. PAYNE	298.15
DORIS M. McKOY	998.51
EDWARD T. MOONEY	798.15
MADELINE GREEN	400.00
RALPH BISHNER	660.00
ANGELICA DECOUD	602.11
MARJORY B. MOORE	602.11
DELINA I. MOORE	400.00
MARY B. CONN	602.11

Defendant: PAULA SNEED
Case Number: MO-93-CR-058 (05)

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court

Total Offense Level:	10
Criminal History Category:	II
Imprisonment Range:	8 months to 14 months
Supervised Release Range:	2 to 3 years
Fine Range:	$ 3,000 to $ 30,000
Restitution:	$ 85,308.68

The fine is waived or is below the guideline range because of the defendant's inability to pay a fine in addition to restitution.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50148

UNITED STATES OF AMERICA
Plaintiff-Appellee,
versus

PAULA SNEED, NORRIS LOUIS MCGRAW,
PATRICK JOHNSON and SHARON ANN POLLEY,
Defendants-Appellants.

Appeals from the United States District
Court for the Western District of Texas

ON PETITIONS FOR REHEARING
(October 26, 1995)

Before POLITZ, Chief Judge, EMILIO M. GARZA, and STEWART, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petitions for rehearing for Paula Sneed and Sharon Ann Polley filed in the above case are denied.

ENTERED FOR THE COURT:

/s/ Emilio M. Garza
Emilio M. Garza
United States Circuit Judge

APPENDIX F

UNITED STATES CONSTITUTION

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX G

UNITED STATES SENTENCING GUIDELINES

SECTION 1B1.3(a)(1)(B)

Unless otherwise specified, (i) the base offense level where the guideline specified more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determine on the bases of the following:

> in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise, undertaken by the defendant in concert with others, whether or not charged as a conspiracy), all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity ...